From: LERS, EOIR (EOIR)
To: LERS, EOIR (EOIR); All of Judges (EOIR); BIA BOARD MEMBERS (EOIR); BIA ATTORNEYS (EOIR); All of OCIJ JLC (EOIR); Alder Reid, Lauren (EOIR); Allen, Patricia M. (EOIR); Baptista, Christina (EOIR); Barnes, Jennifer (EOIR); Bauder, Melissa (EOIR); Berkeley, Nathan (EOIR); BIA TEAM JLC; BIA TEAM P (EOIR); Brazill, Caitlin (EOIR); Burgie, Brea (EOIR); Burgus, Elizabeth (EOIR); Cicchini, Daniel (EOIR); Cowles, Jon (EOIR); Curry, Michelle (EOIR); Evans, Brianna (EOIR); Grodin, Edward (EOIR); Hartman, Alexander (EOIR); Kaplan, Matthew (EOIR); King, Jean (EOIR); Korniluk, Artur (EOIR); Lang, Steven (EOIR); Lovejoy, Erin (EOIR); Martinez, Casey L. (EOIR); Noferi, Mark (EOIR); Park, Jeannie (EOIR); Powell, Karen B. (EOIR); Ramirez, Sergio (EOIR); Rimmer, Phillip (EOIR); Robbins, Laura (EOIR); Rodrigues, Paul A. (EOIR); Rodriguez, Bernardo (EOIR); Rothwarf, Marta (EOIR); Sanders, John W. (EOIR); Schaaf, Joseph R. (EOIR); Stutman, Robin M. (EOIR); Swanwick, Daniel (EOIR); Taufa, Elizabeth (EOIR); Vayo, Elizabeth (EOIR); Wilson, Amelia (EOIR)
Cc: McHenry, James (EOIR); Reilly, Katherine (EOIR); Santoro, Christopher A (EOIR); Sheehey, Kate (EOIR); Moutinho, Deborah (EOIR); Adams, Amanda (EOIR); Pease, Jeffrey (EOIR); Morgan, Kenosha (EOIR); Macri, Andrea (EOIR); EOIR Library (EOIR)
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Office of Policy | Legal Education and Research Services Division

Policy & Case Law Bulletin
May 11, 2018

Federal Agencies

DOJ

- EOIR Releases Court Statistics and Announces Transparency Initiative

  EOIR released immigration court statistics through the first two quarters of Fiscal Year 2018. The May 9, 2018 release of certain immigration court statistics is the first step in an effort to increase transparency into the immigration court system by releasing immigration court data on a recurring basis.

- Virtual Law Library Weekly Update — EOIR

  This update includes resources recently added to EOIR's internal or external Virtual Law Library, such as Federal Register Notices, country conditions information, and links to recently-updated immigration law publications.

DHS

- DHS to Terminate Temporary Protected Status Designation for Honduras

  The Secretary of Homeland Security determined that termination of the Temporary Protected Status (TPS) designation for Honduras is required pursuant to the Immigration and Nationality Act. To allow for an orderly transition, the termination is delayed until January 5, 2020

Second Circuit

- Perez Henriquez v. Sessions

  No. 15-3285, 2018 WL 2106860 (2d Cir. May 8, 2018) (Controlled Substances; Aggravated Felony; Divisibility)

  The Second Circuit denied the PFR, upholding the determination that the petitioner was removable based on his conviction for possession of a controlled substance in the fifth degree in violation of NYPL § 220.06 and that he was ineligible for cancellation of removal

because his conviction for bail jumping in violation of NYPL § 215.57 constituted an aggravated felony. The court determined that an offense under NYPL § 220.06 is not categorically a controlled substance offense but that the statute is divisible. Under the modified categorical approach, the charging document showed that the petitioner had been convicted under NYPL § 220.06(5) for possessing cocaine, a controlled substance under federal law. The Court also afforded Chevron deference to the BIA's interpretation of failure to appear pursuant to INA § 101(a)(42)(T). See Matter of Garza-Olivares, 26 I&N Dec. 736 (BIA 2016). The court concluded that the phrase "for which a sentence of 2 years' imprisonment or more may be imposed" requires that the maximum sentence authorized for failure to appear must be at least two years imprisonment to qualify as aggravated felony under INA § 101(a)(43)(T). Because a sentence of up to seven years of imprisonment may be imposed for failure to appear under NYPL § 215.57, the court concluded that the statute meets the sentencing requirement under INA § 101(a)(43)(T).

Fourth Circuit

- Lara-Aguilar v. Sessions

  No. 16-1836, 2018 WL 2026971 (4th Cir. May 2, 2018) (Asylum-General; WOR; Reinstatement of Removal)

  The Fourth Circuit denied the PFR, concluding that aliens subject to reinstatement of removal under INA § 241(a)(5) are not eligible to apply for asylum even where an application is based on changed circumstances under INA § 208(a)(2)(D).

Fifth Circuit

- Cabrera v. Sessions

  No. 15-60711, 2018 WL 2106621 (5th Cir. May 7, 2018) (Asylum-General; Asylum-PSG)

  The Fifth Circuit granted in part the PFR and remanded, holding that the agency erred by (1) requiring the petitioner to prove past persecution to establish a claim based on a well-founded fear of future persecution; and (2) recharacterizing the petitioner's claimed social group. The court explained that the agency did not evaluate whether the group identified by the petitioner—"female activists or human rights defenders from Honduras who actively protest the Maras"—was described with particularity, or whether its members shared common immutable traits. Instead, the Immigration Judge analyzed the petitioner's claim based on a group he identified as "those who might defy gangs."

Seventh Circuit

- Yahya v. Sessions

  No. 17-1416, 2018 WL 2055425 (7th Cir. May 3, 2018) (per curium) (MTR-CCC)

  The Seventh Circuit denied the PFR, holding that the IJ and the BIA permissibly concluded that the petitioner did not establish materially-changed conditions for moderate Muslims in Indonesia between his last hearing in 2003 and his 2016 motion to reopen, and the petitioner's motion to reopen under INA § 240(c)(7)(C)(ii) was therefore properly denied.

Eighth Circuit

- United States v. Pyles

No. 17-2116, 2018 WL 2054907 (8th Cir. May 3, 2018) (Aggravated Felony)

The Eighth Circuit affirmed the district court, concluding that the defendant's conviction for aggravated assault on a family member in violation of Ark. Code. Ann. § 5-26-306(a)(3) was a violent felony under the ACCA's "force clause" under 18 U.S.C. § 924(e)(2)(B)(i), which is analogous to 18 U.S.C. § 16(a). The court explained that "the force element of a violation—impeding respiration or blood circulation by applying pressure on the throat or neck or by blocking the nose or mouth—necessarily requires the use of violent force . . . ." The court rejected the defendant's argument that removing a person's sleep apnea breathing machine would be sufficient, and stated that he did not cite to any case in which a defendant was charged with violating the statute for the use of non-violent force. Lastly, the court held that § 5-26-306(a)(3) requires a mens rea of more than recklessness, as it requires that a defendant acted "purposely."

Ninth Circuit

- Salgado v. Sessions

  No. 14-71890, 2018 WL 2107197 (9th Cir. May 8, 2018) (Competency; Due Process)

  The Ninth Circuit denied the PFR, holding that the petitioner's "complaints of poor memory, without evidence of an inability to understand the nature and object of the proceedings, were insufficient to show mental incompetency." The court further concluded that any memory loss the petitioner may have experienced "did not prejudice his removal proceedings because his application, not his poor memory, was the basis for the IJ's denial of cancellation of removal." The court also stated that the IJ did not err in denying the petitioner's request for a continuance for a mental health evaluation.

- Miller v. Sessions

  No. 15-72645, 2018 WL 2107269 (9th Cir. May 8, 2018) (MTR; In Absentia; Reinstatement of Removal)

  The Ninth Circuit granted the PFR and remanded, concluding that while an alien placed in reinstatement proceedings under INA § 241(a)(5) generally cannot challenge the validity of the prior removal order in the reinstatement proceeding itself, he or she "retains the right, conferred by [INA § 240(b)(5)(C)(ii)], to seek rescission of a removal order entered in absentia, based on lack of notice, by filing a motion to reopen 'at any time.'"

- Campos-Hernandez v. Sessions

  No. 14-70034, 2018 WL 2033755 (9th Cir. May 2, 2018) (NACARA)

  The Ninth Circuit denied the PFR, deferring to the BIA's interpretation in Matter of Castro-Lopez, 26 I&N Dec. 693 (BIA 2015), which held that 10 years of continuous physical presence is required after the most recently incurred ground of removal for aliens seeking special rule cancellation of removal under section 203 of NACARA.